Council or the senior members of the profession as expressed in their testimonials should not in any way be substituted for the view of the court, if the Bar Council and members of the profession themselves feel that an applicant should be restored to the roll, and this view is not inconsistent with the other materials before the court the burden on the court is surely less onerous and much of the foundation for disinclination to entertain the application is gone.

In the final analysis the question here is simply whether on the materials available, it is fair and reasonable for the court to find that the appellant is a proper person to have his name restored to the Roll and it is not against the public interest to so order. Considering all the circumstances of the case it was certainly fair and reasonable to allow the appellant's name to be restored to the roll.

The judgment of the High Court was accordingly set aside and we ordered that the name of the appellant be restored to the roll. We however made no order as to costs.

At the conclusion of the hearing of the appeal counsel appearing for the Bar Council wanted clarification as to who should be served with the notice of motion under s 107 of the Act. The answer must be as what is found in s 103 and s 107 of the Act, that is, the notice of motion shall be served to the Bar Council who shall be represented at the hearing of the motion and who shall place before the court a report which shall include copies of any report of the proceeding as a result of which the name of the applicant was removed or struck off from the Roll. There is no requirement to serve the notice of motion on any other person.

Appeal dismissed.

Solicitors: *Christina Chia, Ng & Partners; Shearn Delamore & Co.*

Reported by *Prof Ahmad Ibrahim*

Abdul Jalil bin Abdul Satar v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 49 OF 1987
ABDUL HAMID OMAR LP, HARUN HASHIM AND GUNN CHIT TUAN SCJJ
14 MARCH 1991

Criminal Procedure — Witness — Failure to call giving rise to serious gap in prosecution case — Serious breach in chain of evidence relating to drugs produced in court

In this case the appellant had been convicted on a charge of trafficking in dangerous drugs and sentenced to death. It appeared that a former police officer, Teh Kok Liang, had sent the exhibits in the case to the government chemist and that a witness received the exhibits from Teh Kok Liang together with the chemist's report. Teh Kok Liang was not called to give evidence as it was stated that he had retired and could not be traced. The exhibits could not be identified by the officer who picked them up at the scene.

Held, allowing the appeal and setting aside the conviction and sentence:

The prosecution in this case had not given valid reasons as to why Teh Kok Liang could not be traced or what efforts had been made to trace him. The failure to call the witness has caused a serious break in the chain of evidence relating to the identity of the drugs produced in court. As the prosecution has failed to comply with the requirements of strict proof in a criminal case, the appeal must be allowed and the conviction and sentence set aside.

[Bahasa Malaysia summary

Di dalam kes ini perayu telah disabitkan atas tuduhan mengedar dadah merbahaya dan telah di hukum mati. Barang kes telah diberi oleh seorang pegawai polis, Teh Kok Liang, kepada pegawai kimia dan kemudian seorang lain telah menerima barang kes itu dari Teh Kok Liang. Teh Kok Liang tidak dipanggil sebagai saksi oleh kerana dikatakan ia telah bersara dan tidak boleh dikesan. Barang-barang kes itu juga tidak boleh dikenali oleh pegawai polis yang mendapatnya di tempat kejadian itu.

Diputuskan, membenarkan rayuan dan mengenepikan sabitan dan hukuman:
Pihak pendakwa di dalam kes ini tidak dapat memberi sebab-sebab yang sah kenapa Teh Kok Liang tidak dapat dikesan atau dicari atau menerangkan langkah-langkah yang telah diambil untuk mencarinya. Kegagalan memanggil saksi itu telah menyebabkan talian keterangan diputuskan mengenai identiti dadah yang dibawa ke mahkamah. Oleh kerana pihak pendakwa telah gagal mematuhi kepada beban pembuktian yang ketat di dalam kes jenayah, rayuan hendaklah dibenarkan dan sabitan dan hukuman diketepikan.]

Cases referred to
1 *Teoh Hoe Chye* v *PP* [1987] 1 MLJ 220 (folld)
2 *Su Ah Ping* v *PP* [1980] 1 MLJ 75 (refd)

Appeal from: Selangor Criminal Trial No 15/84 (High Court, Kuala Lumpur)

Harpal Singh Grewal (*S Thayaparan* with him) for the appellant.

Mohd Yusoff bin Haji Zainal Abidin (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Gunn Chit Tuan SCJ (delivering the judgment of the court): In this appeal, Abdul Jalil bin Abdul Satar (the appellant) has appealed against the decision of the High Court at Kuala Lumpur on 11 August 1987 when he was convicted and sentenced to death on an amended charge which reads as follows:

> That you on 16 June 1983 at about 3pm at Lot No 389A Batu 9½, Jalan Cheras, Kajang, in the district of Ulu Langat in the state of Selangor, did on your own behalf traffic in dangerous drugs to wit cannabis weighing 429.59g and you have thereby committed an offence under section 39B(1)(a) of the Dangerous Drugs Act 1952 (Rev 1980) and punishable under section 39B(2) of the same Act.

The case for the prosecution revealed that acting on information received on 16 June 1983, Insp Mokhtar bin Hj Mohamad (PW1) led a party of police personnel to 9½ milestone, Jalan Cheras, Kajang. Arriving at a house on Lot No 389A, the inspector found the front door open and through this door he saw a male person, whom he identified as the appellant, coming out of the kitchen area. PW1 and his men then entered the house and identified themselves to the appellant who then accompanied PW1 to the area behind the kitchen of the said house. This area appeared to have been used as a store and also contained a toilet and bathroom. It has an access door to the back of the house. On entering the area in question not far from the access door, PW1 saw a piece of newspaper (P8) spread on the floor and on it was a pile of dried leaves (P9). There was also one plastic bag (P10) containing paper rolls (P11) and another smaller plastic bag (P12) containing 348 brown paper cuttings similar to the paper in the plastic bag containing the paper rolls. PW1 then directed his men to handcuff the appellant and he then examined one of the rolls in the plastic bag (P10) and found that it contained dried leaves similar to those on the newspaper spread on the floor. PW1 suspected the dried leaves to be cannabis and he and his men then counted the rolls and found them to number 750 containing the same substance. He then issued a search list (P7) and took all the exhibits together with the appellant and his wife, one Norgayah bte Hj Mohd Yusoff and one Azam Khan bin Abdul Satar, who was arrested outside the house, to Jalan Bandar Police Station where he made a police report. Later, all the arrested persons and the exhibits were taken to the Kajang Police Station where they were handed over to ASP Latifi bin Dato Ahmad (PW6), the investigating officer.

PW6 confirmed receiving the said exhibits on 16 June 1983 at about 6pm from PW1. He also confirmed receiving into custody the accused, Norgayah bte Hj Mohd Yusoff and Azam Khan bin Abdul Satar. Later on, PW6 released Norgayah, the appellant's wife, and Azam Khan, the appellant's younger brother. The exhibits were packed by PW6 and sealed in packages marked A, B and C and were then sent via L/Cpl 26093 Teh Kok Liang to the chemist, Mr Wong Hong Hoon (PW7) who testified and confirmed that the dried leaves sent to him were cannabis as defined in s 2 of the Dangerous Drugs Act 1952, totalling 429.59g.

At the close of the prosecution's case and after submissions by both counsel, the defence was called and the appellant elected to make an unsworn statement from the dock. The appellant's sister-in-law, one Noriza bte Hj Mohd Yusoff (DW2) and the appellant's wife, Norgayah bte Hj Mohd Yusoff (DW3) also testified on oath for the defence. After considering the defence, the learned judge found that the defence had not rebutted the prosecution's case nor raised any reasonable doubt. He therefore found the appellant guilty as charged and, in accordance with the law, sentenced him to be hanged.

Several grounds were raised in the appeal but we considered that the only one which merited our consideration was the contention that the learned trial judge had erred in law and in fact when he failed to hold that the custody of the exhibits with the police left a gap in the chain of evidence relating to the exhibits before their production in court. It was argued that the learned judge ought to have held that the failure of the prosecution to call L/Cpl 26093 Teh Kok Liang, who delivered the exhibits to the chemist PW7 and collected them back from him, was a serious break in the chain of evidence. Learned counsel for the defence referred us to p 16 of the appeal records where PW6 stated that he had sent the exhibits to the chemist via L/Cpl Teh Kok Liang, but there is a note after that by the learned judge that the deputy public prosecutor then stated that the witness had retired and could not be traced after all efforts made. PW6 had also stated in evidence that on 8 September 1983 at 9.40am, he received back the exhibits via the said Teh Kok Liang together with the chemist's report. PW6 added that he believed that Teh Kok Liang had received the exhibits a day earlier. Defence counsel stressed that the learned trial judge had failed to give any consideration to the fact that the exhibits were in the possession of L/Cpl Teh Kok Liang for a period of 24 hours without any explanation as to where and in whose custody they were kept during the said period. He contended that the learned judge ought to have held that the failure of the prosecution to adduce evidence that provided the necessary link in the chain of evidence as regards the exhibits was fatal to the prosecution's case.

We were referred to *Teoh Hoe Chye* v *PP*[1] in which case this court, in a judgment delivered by Abdul Hamid CJ (Malaya) (as he then was) had pointed out

that fundamentally the issue was not whether there was a failure to call or not to call a witness but whether the failure to call a particular witness gave rise to a serious gap in the prosecution case. Defence counsel contended that in this case there was a serious break in the chain of evidence affecting proof as to the identity of the exhibits as in *Teoh Hoe Chye*'s case[1] when the appellant's appeal was allowed and the conviction set aside.

We decided to call upon the learned deputy to address us only on this issue raised by the appellant but he was unable to enlighten us on what steps had been taken by the police to trace Teh Kok Liang. He was also unable to explain why no efforts had been made to trace Teh Kok Liang through the Pensions Divisions of the Public Services Department.

This court has observed in *Teoh Hoe Chye*'s case[1] that the law is clear since the Federal Court's case of *Su Ah Ping* v *PP*[2] that it is unnecessary to call evidence to ensure that there is no break in the chain of evidence. If the officer who picked up the object at the scene produced it and identified it as that very object, that is enough and there is no need to call every other officer who handled it, unless there is doubt as to the identity. We would reiterate as we have done so in *Teoh Hoe Chye*'s case[1] that where a doubt as to the identity of an object arises, a failure to adduce evidence to provide the necessary link in the chain of evidence is fatal to the prosecution case. In the instant case, there would be no difficulty for PW1 to identify the plastic bags (P10 and P12) and the newspaper (P8) on which he has signed. But in the case of the 750 brown paper rolls (P11) containing a total of 362.83g nett of dried plant material and the paper packet (marked B by PW6) containing 66.76g nett of dried plant material, we have our doubts that PW1 could have really identified the plant materials produced in court on 3 August 1987 as the dried leaves which were recovered by him from the appellant's premises more than four years ago, ie on 16 June 1983. In the circumstances, the evidence of L/Cpl Teh Kok Liang was therefore necessary to prove that the exhibits which were received by PW6 on 8 September 1983 were the very ones which the chemist had sent back to him the day earlier. L/Cpl Teh Kok Liang would have been able to provide the missing link in the chain of evidence if more strenuous efforts had been made to trace him through the Pensions Division of the Public Services Department, to give evidence for the prosecution. The prosecution has not given valid reasons as to why L/Cpl Teh Kok Liang could not be traced or what efforts have been made to trace him. In our view, the failure to call that witness in this case has caused a serious break in the chain of evidence relating to the identity of the drugs produced in court. As the prosecution has failed to comply with the requirements of strict proof in a criminal case, it is our considered view that in the circumstances of this case the appeal of the appellant should be allowed. We therefore set aside his conviction and sentence and ordered that he be acquitted and discharged.

Appeal allowed.

Solicitors: *AJ Ariffin Chong & Harpal.*

Reported by *Prof Ahmad Ibrahim*

Pentadbir Tanah Daerah, Wilayah Persekutuan lwn Abdul Hady dan satu lagi rayuan

MAHKAMAH AGUNG (KUALA LUMPUR) — RAYUAN SIVIL NO 01-2-1990 DAN 01-64-89
HASHIM YEOP A SANI HB (MALAYA), HARUN HASHIM DAN MOHAMED YUSOFF HMA
16 MAC 1991

Undang-Undang Tanah — Pengambilan tanah — Tidak ada penilaian atau tuntutan di buat di hadapan Pemungut Hasil Tanah — Pampasan diberi oleh Pemungut Hasil Tanah — Tuntutan dibuat ke Mahkamah Tinggi — Sama ada perintah pampasan lebih dari pampasan yang diberi boleh dibuat — Perkara yang boleh diambil kira untuk mencapai amaun pampasan — Akta Pengambilan Tanah 1960, s 12 & Jadual Pertama

Rayuan-rayuan ini telah dibuat terhadap keputusan Mahkamah Tinggi yang telah memberi pampasan kepada responden berlebihan dari apa yang diberi oleh Pemungut Hasil Tanah. Responden-responden ialah penyewa dan penghuni tingkat bawah dan tingkat atas bangunan di Kuala Lumpur yang dipunyai oleh Ideal Home Development Sdn Bhd. Tanah itu telah diambil di bawah Akta Pengambilan Tanah 1960 dan Pemungut Hasil Tanah telah mengadakan perbicaraan untuk menentukan pampasan. Kedua-dua responden telah hadir akan tetapi telah tidak memberi apa-apa penilaian atau tuntutan. Pemungut Hasil Tanah telah memberi pampasan dan kemudiannya responden telah membuat permohonan ke Mahkamah Tinggi. Mahkamah Tinggi telah memberi pampasan lebih dari apa yang diberi oleh Pemungut Hasil Tanah. Rayuan telah dibuat.

Diputuskan, membenarkan rayuan-rayuan itu:

(1) Seksyen 4 Jadual Pertama Akta Pengambilan Tanah 1960, menyatakan jika seseorang yang ada kepentingan tidak membuat atau enggan membuat tuntutan dengan sebab-sebab yang mencukupi yang dibenarkan oleh hakim, orang itu hendaklah tidak diberi pampasan lebih daripada pampasan yang diperintahkan oleh Pemungut Hasil Tanah selepas mendengar perbicaraan di bawah s 12 dalam Akta tersebut. Di dalam kes-kes ini kedua-dua responden tidak membuat apa-apa tuntutan atau penilaian kepada Pemungut Hasil Tanah dan apabila perintah Pemungut Hasil Tanah dirujuk kepada Mahkamah Tinggi, tidak ada alasan diberi mengapa tuntutan atau penilaian tidak dibuat.

(2) Seksyen 2 Jadual Pertama Akta itu memperuntukkan bahawa untuk mencapai satu amaun pampasan di bawah Akta itu perkara-perkara yang disenaraikan di bawah s 2 hendaklah diambilkira dan perkara lain tidak boleh diambil kira. Di dalam kes ini hakim yang arif telah mengambil kira beberapa